

No other fees are believed to be required in connection with the filing of this response. Should any fee be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same.

Claim rejections under 35 U.S.C. §112

The Examiner has rejected claims 1,4, and 6-11 specifically, referring generally to claims 1-16, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, the Examiner has rejected claims 1 and 4, for their recitation of “corresponding”, asserting that the structural limitations encompassed thereby are unclear, and thus, that the recitation of this term renders these claims indefinite. Applicant has now amended these claims to delete this term, and to recite in its place “generally symbolic of”, thereby rendering this rejection moot.

The Examiner has also rejected claims 8 and 9 for their recitation of ‘the mad playpiece’ and ‘the scared playpiece’, respectively. Applicant has now amended these claims to remove this phrase, thereby rendering this rejection moot.

The Examiner has also rejected claims 6-10, for their recitation of a variety of shapes, asserting that the structural features encompassed by these shapes are unclear, and as a result, that these claims are indefinite. This rejection is respectfully traversed.

Contrary to the Examiner’s assertion, Applicant respectfully asserts that the recited shapes are well known to those of ordinary skill in the art. That is, tear drop shaped as is readily understood by those of ordinary skill, would be the shape of a dropping tear or any dropping fluid. Clearly, one of ordinary skill, if not a member of the ordinary public, would be familiar with the shape of a drop of water as leaving a faucet or a tear dropping from an eye. Similarly, those of ordinary skill in the art are familiar with representations of the sun, or ‘sun shapes’, in fact, likely having seen representations of the same in a variety of forms of media, such as the television news, newspaper weather sections and the like. Likewise, ‘flame shaped’ indicia are present on many flammable household items, including many aerosol spray cans as but one example.

Finally, one of ordinary skill in the art would clearly understand the term ghost shaped, inasmuch as such shapes are present in many forms of literature, including childrens books.

Further, in the instance of the present application, where the relevant art is education, and preferably the education of children those of ordinary skill in the art would be either educators of children or children themselves. Children as well as their teachers would clearly understand what is meant by these terms, as the shapes referred to are ubiquitous in the illustrations of educational materials, holiday materials, and, in the case of a flame shaped, public buildings in general. Finally, representations of such shapes are provided in Figures 1, 3, 4, 5a & b, 6a & b, 7a & b, 8a & b, thereby providing further clarity to their terms. It is thus respectfully submitted that one of ordinary skill in the art would readily understand the scope of claims reciting such terms, without the further recitation of structural features of the shapes. As a result, it is believed that claims 6-10 are sufficiently definite as to be in compliance with 35 U.S.C. §112 and withdrawal of these rejections is appropriate and is respectfully requested.

Finally, the Examiner rejected claim 11 for its recitation of the phrase 'plush, pillow bag'. Although Applicants believe that this phrase is sufficiently definite in light of the common, well-known definitions associate with each, Applicant has now amended the specification to further recite that the inclusion of filling in the panels of the container can render the container soft and plush so as to be usable as a pillow. In light of this amendment, as well as the common, known definitions of these terms, it is respectfully submitted that claim 11 is sufficiently definite so as to comply with 35 U.S.C. §112 and withdrawal of this rejection is appropriate and is respectfully requested.

Claim rejections under 35 USC 102 over the Handbook

The Examiner has rejected claims 1-4 and 12-16 under 35 U.S.C. §102(b) as being anticipated by Shaver (U.S. Patent No. 5,092,778). The Examiner has also rejected claims 1, 4 and 6-9 under 35 U.S.C. §102(b) as being anticipated by Frampton (U.S. Patent No. 2,729,020). Additionally, the Examiner rejected claims 1 and 10 under 35 U.S.C. §102(b) as being anticipated by Fredericks (4,636,172). Finally, the Examiner has

rejected claims 5 and 11 under 35 U.S.C. §103(a) as being unpatentable over Shaver. Independent claims 1 and 13 having been amended, these rejections are rendered moot. Inasmuch as these rejections are deemed to apply to the amended claims, these rejections are respectfully traversed.

As recited in claims 1-16, either as originally filed or now amended, as the case may be, the present invention provides an interactive toy that teaches the identification of emotion, and provides the opportunity to teach appropriate responses thereto, via visual, kinesthetic and linguistic means (see claims 1-3 as originally filed and now amended). In particular, the present toy utilizes a combination of indicia, generally associated with, or symbolic of, a particular emotion, in order to interactively teach individuals to identify the same. Advantageously, the toy comprises a container, that in preferred embodiments is in the shape of a heart, which other playpieces generally symbolizing a series of emotions may be taken out of or placed within. In this fashion, the interactive toy of the present invention provides the opportunity for the user to kinesthetically interact with the toy, and provides the opportunity to teach that many emotions arise from, or touch, the heart (see claim 1 as filed and as now amended). During play, the user removes or replaces the other playpieces, visually and linguistically interacting with them, in order to learn the identification of emotions through symbolic indicia.

The Shaver patent does not disclose such an interactive toy that teaches the identification of emotion through visual, linguistic and kinesthetic means. Rather, the Shaver patent teaches a diagnostic tool, in the form of a figure, preferably a teddy bear, having disposed therein a receptacle within which objects that are indicative of the nature or intensity of emotional feelings may be collected. See, Shaver, abstract, lines 3-7. The figure is designed to assist a teacher or counselor in getting a user to communicate sensitive information, such as information about abuse, that may be otherwise difficult for the user to convey. Shaver explicitly teaches that no conclusions about the objects that are placed in the receptacle are to be reached without questioning the user as to their meaning:

It is important for the practitioner to ask the child what the disks mean to him or her rather than make assumptions. For instance, for one child the color red may represent anger, but for another child it may simply be a favorite color. One child may pick a yellow disk because it represents sunshine and warmth while another child may have fear associated with yellow because of involvement of a fire. The child should always be asked to describe what the colors, faces and numbers or intensity dots mean. See, Shaver, column 5, lines 28-37.

Put simply, the toy of Shaver is not intended, or even desired, to be used to teach a variety of emotions to the user, but rather, is intended to be used by a user to communicate an emotion that they may be experiencing to an observer.

To the contrary, and while the current inventive toy may also be used for diagnostic purposes, the toy of the present invention uses shapes, colors, words, symbols, graphics and the like commonly associated with, or symbolic of, a variety of emotions, preferably in combination with linguistic indicia of the emotion, is used primarily to teach the user to identify emotions that they may later experience. A user of the present interactive toy, would remove a playpiece from the desirably heartshaped container thereby kinesthetically learning that emotions can come from the heart, view the playpiece to identify and learn common indicia associated with that emotion, and read or have read to them linguistic information teaching them the emotion. While the indicia used in connection with the present inventive toy is intended to identify the emotion, the indicia employed by Shaver is taught not to do so, and in fact, Shaver teaches against the instruction of emotion.

✓ In summary, Shaver does not teach an interactive toy that symbolically represents emotions through visual and linguistic means – there are no linguistic means taught or suggested in connection with the toy of Shaver. Further, there is no teaching or suggestion that the Shaver toy may further be used in play to represent emotions kinesthetically, i.e., there is nothing about inserting objects into a slot in a teddy bears belly that is representative of an emotion, nor is any such activity suggested.,

As a result, the Shaver patent does not teach or suggest each and every element of claims 1 and 13, nor the claims dependent therefrom. Thus, it cannot be said that the Shaver patent anticipates these claims, and withdrawal of this rejection is appropriate and is further respectfully requested. Inasmuch as Shaver does not recite each and every element of independent claim 1, nor are the lacking elements suggested, this disclosure cannot be said, taken alone, to render this claim or the claims dependent therefrom obvious. Withdrawal of the rejection of claims 5 and 11 as obvious over this reference is thus appropriate and is respectfully requested.

Frampton discloses a toy that teaches shape association with an incorporated timing feature. That is, a plurality of 'keys' having numerous shapes are provided along with blocks having receptacles provided in a surface thereof. Each key will fit within one block whose receptacle corresponds to the shape of the key. There is no key taught or suggested that represents emotions both visually and linguistically, nor does Frampton teach or suggest that the game be desirably played in a fashion that represents emotions kinesthetically. Inasmuch as claim 1 now recites that each of the playpieces is generally visually and linguistically symbolic of a particular emotion and that the toy is desirably used in a fashion so that emotions are desirably kinesthetically represented, and Frampton does not teach or suggest these claim limitations, Frampton cannot be said to anticipate claim 1 or the claims dependent therefrom. As a result, withdrawal of this rejection is appropriate and is respectfully requested.

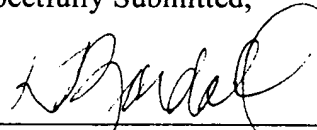
Fredericks discloses a teaching device having a plurality of flexible pockets, each pocket having a letter of the alphabet displayed thereon. A plurality of dolls are provided having the matching letter displayed thereon. In play, the user matches the letter on the pocket with a letter on a doll and inserts the corresponding doll into the pocket. Again, there is no teaching, suggestion, or even mention, of the desirability of providing visual and linguistic symbolism of emotion in connection with the dolls, nor is the insertion of the dolls into the corresponding pocket taught to desirably kinesthetically be representative in any way of the emotion so symbolized. As such, the disclosure of Fredericks cannot anticipate claims 1 and 10, and withdrawal of this rejection is appropriate and respectfully requested.

CONCLUSION

In view of the above remarks, it is respectfully submitted that the claims and the present application are now in condition for allowance. Approval of the application and allowance of the claims is earnestly solicited. In the event that a phone conference between the examiner and the Applicant's undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact said attorney at (651) 275-9809.

Respectfully Submitted,

By:



Kimberly S. Jordahl, #40,998
Kagan Binder, PLLC
Suite 200, Maple Island Building
221 Main Street North
Stillwater, MN 55082
Phone: 651-275-9809
Facsimile: 651-351-2954

Dated: April 26, 2002

KSJ/3543